

ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE

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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:

) No. R-15-0011

)

) **COMMENT OF ARIZONA**

Petition to Amend Rules 15.5 and 39,

) **ATTORNEYS FOR CRIMINAL**

Arizona Rules of Criminal Procedure

) **JUSTICE REGARDING PETITION**

) **TO AMEND RULES 15.5 AND 39,**

) **ARIZONA RULES OF CRIMINAL**

) **PROCEDURE**

)

)

Pursuant to Rule 28 of the Arizona Rules of Supreme Court, Arizona Attorneys for Criminal Justice (“AACJ”) hereby submits the following comment to the above-referenced petition.

AACJ, the Arizona state affiliate of the National Association of Criminal Defense Lawyers, was founded in 1986 in order to give a voice to the rights of the criminally accused and to those attorneys who defend the accused. AACJ is a statewide not-for-profit membership organization of criminal defense lawyers, law students, and associated professionals dedicated to protecting the rights of the accused in the courts and in the legislature, promoting excellence in the practice of

criminal law through education, training and mutual assistance, and fostering public awareness of citizens' rights, the criminal justice system, and the role of the defense lawyer.

AACJ supports the proposed amendments to Ariz. R. Crim. P. 15.5 and 39, because it fixes a glitch in the existing rules, namely, that a prosecutor who wishes to redact disclosure may do so but defense counsel has no opportunity to know the nature of the information that was redacted.

Arizona adopted the disclosure procedures in Rule 15 because it embraced the concept that a fair trial is best achieved when the parties disclose the information that they intend to use prior to trial. Arizona has particularly eschewed the philosophy of "trial by ambush" that is still used in the federal system and many other jurisdictions. Prosecutors are required by Rule 15.1 to disclose far more information than just that which may be used at trial, and the kind of information that prosecutors are permitted to withhold is drastically limited.

Rule 15.5 properly recognizes that there are some pieces of information that are properly withheld from the defense. Rule 15.5 established a procedural mechanism by which prosecutors may seek authorization from the court to redact information to be disclosed to the defense. Other pieces of information are *per se* protected, such as a victim's identifying or locating information. A.R.S. § 13-4434.

What the Rule fails to do, however, is provide the defendant or his counsel with notice of what type of information has been redacted from disclosure. The Maricopa County Public Defender has astutely noticed this absence from the Rule and has proposed a very reasonable amendment to Rule 15.5 that would solve the problem. Furthermore, having the prosecution keep a redaction log would ensure that only appropriate items are redacted.

AACJ has reviewed the comment of the State Bar of Arizona, which includes the separate views of both the Prosecution and Defense Subcommittees. The Prosecution Subcommittee bemoans the amount of time it would take to keep a log of redactions, suggesting that it “would likely double, triple, or even quadruple the amount of time it would take to redact a single document.” This claim is simply wrong. The staff member who is redacting documents in a particular file need only state in the log what kind of information was redacted; for example, if the redaction is Victim One’s address, telephone number, date of birth, and social security number, the log need only say “Victim One’s locating/identifying information.” It is ridiculous to claim that this would quadruple the amount of time it takes to redact a

document. If the prosecution is only redacting that information which is appropriate, then the log should not take much time at all to keep.¹

What would stretch resources, however, is the needless litigation engendered by uncooperative prosecutors who would overredact, refuse to respond to defense requests for information on the redacted information, and then have to respond to a motion and supply the trial judge with the documents to inspect *in camera*. The Prosecution Subcommittee did not address this concern in its comment.

AACJ has also reviewed the comment of the Arizona Prosecuting Attorneys' Advisory Council (APAAC), which extends the Prosecution Subcommittee's unsupported claims to the absurd limit. APAAC claims that this rule will single-handedly shut down all Early Disposition Courts throughout the state. AACJ asks this Court to see APAAC's claim for what it is: hyperbolic scare tactics.

For these reasons, AACJ respectfully requests this Court grant the petition to amend Ariz. R. Crim. P. 15.5 and 39.

DATED: May 20, 2015.

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By /s/
David J. Euchner

¹ Citing to the case volume in Pima County, the Prosecution Subcommittee overlooks that most of those cases are victimless crimes which are unlikely to need any redaction at all.

This comment e-filed this date with:

Supreme Court of Arizona

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